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No. 72-1664

In the
Supreme Court of the United States
October Term, 1972

SIMEON TOBA ABIODUN and MARY O. ABIODUN, his wife, Individually and as next friends of OLUBIMPE ABIODUN, their minor child; etc., et al.,

Plaintiffs-Petitioners,

vs.

MARTIN OIL SERVICE, INC., an Illinois corporation; etc., et al.

Defendants-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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In The

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in this case on March 14, 1973.

OPINION BELOW

The opinion of the Court of Appeals below is reproduced in Appendix "A" *infra*. This opinion is reported at 475 F.2d 142 (1973). The District Court did not issue a written opinion.

JURISDICTION

The judgment of the Court of Appeals was entered on March 14, 1973. No petition for rehearing was filed. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254.

QUESTIONS PRESENTED FOR REVIEW

I. Whether allegations in petitioners' complaint of fraud and deceit in the inducement of the importation of aliens and the obtaining of passports, visas and other essentials to the alleged scheme adequately alleged the commission of a tort in violation of the laws of nations within the meaning of 28 U.S.C. §1350.

II. Whether allegations in petitioners' complaint of specific acts of discrimination directed against petitioners as aliens and which were not directed against other employees, adequately stated a claim under the Civil Rights Act, 42 U.S.C. § 1981.

III. Whether the District Court, having reached the merits of certain federal claims, granting summary judgment thereon, should have retained jurisdiction of related state claims under the doctrine of pendent jurisdiction.

STATUTES INVOLVED

Petitioners have invoked the jurisdiction of the United States District Court pursuant to 28 U.S.C. §1350 which provides as follows:

"Alien's action for tort

"The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

STATEMENT OF THE CASE

This action was initiated by petitioners with the filing of their complaint in the United States District Court for the Northern District of Illinois. The petitioners are Simeon Toba Abiodun, his wife and minor child; Adetokunbo O. Banjoko and his wife; Pious Bendele Oduioye, his wife and three minor children and Emmanuel Ajilore, his wife and three minor children. All of the above named individuals are citizens of the Federal Republic of Nigeria, aliens to the United States, visiting the United States under temporary visas.

The respondents are Martin Oil Service, Inc., an Illinois Corporation ("Martin Oil"), Ronald J. Peterson, the Chairman of the Board of Directors ("Peterson"), and Carl C. Greer ("Greer"), President of the corporation; Melinda Martin Vance and Eloise Wright Martin, executors of the estate of Harold T. Martin who was one of the major shareholders in the company and Harry Ayoade Akande ("Akande").

Akande was born in Nigeria and is a citizen of The Republic of Nigeria.

In their complaint, petitioners alleged that defendant Akande, acting on behalf of Martin Oil as either agent, employee, partner or joint venturer and under the specific direction of Peterson and Greer, traveled to the Federal Republic of Nigeria for the purpose of obtaining "trainees" who would be brought to the United States for instruction and training for a period of 12 to 18 months and then returned to the Federal Republic of Nigeria to operate a chain of service stations and other businesses in the Federal Republic of Nigeria. This program was alleged to be a pursuit of the company's policy to expand the

operations of Martin Oil in major cities in Nigeria and to operate other enterprises there.

It is also alleged that while in Nigeria, Akande represented himself to petitioners as a representative of Martin Oil and stated that he had authority to select 4 or 5 trainees as executives in the United States to be trained there and then returned to Nigeria to operate Martin's enterprises. Akande had known the petitioners since their early years. As a result of their conversations, each of the plaintiffs entered into a written contract, generally referred to as a "trainee contract"; resigned and terminated their employment in the Republic of Nigeria by virtue of which they were required to pay a resignation fee equal to several weeks salary and then left their wives and children to undertake the training program in the United States.

The complaint further alleged that upon arriving in Chicago, the petitioners were put in a "training program" as gas station attendants rather than executives. In this training program petitioners were required to perform the ordinary labors of pumping gas, cleaning washrooms, washing cars and cleaning driveways. They were ordered and directed to perform these duties or suffer termination of their employment and their visas and be sent back to Nigeria. The complaint further specifically alleged that the petitioners were required to falsely complete employment applications and social security forms showing that they had no dependents except themselves. The respondents deducted from the salary of the petitioners their cost of transportation to the United States, costs of their uniforms and other clothing required in their jobs and interest charges approaching 10% for moneys advanced to petitioners as well as other charges and deductions, without authority or consent.

The petitioners contended that the fraudulent conduct by the respondents involving issuance of passports and visas was in violation of the law of "nations," thereby giving use to federal jurisdiction under 28 U.S.C. §1350.

As a result of the facts alleged above, the petitioners also contend that respondents' actions were in violation of the Thirteenth Amendment to the United States Constitution which abolishes peonage and involuntary servitude. Further the conduct of respondents in intentionally, willfully, negligently and fraudulently inducing petitioners to leave their careers, families and jobs in Nigeria and by their misrepresentations to them with respect to their jobs in the United States, violated the civil rights of petitioners in violation of 42 U.S.C. §§ 1981 through 1995, and their rights under the Fourteenth Amendment to the United States Constitution.

Respondents presented motions to dismiss or, in the alternative, motions for summary judgment. These motions of the respondents contended that summary judgment should be granted as to the involuntary servitude or peonage claims; that petitioners claims arising under the Civil Rights Act should be dismissed for failure to state a cause of action; that petitioners' contract claims should be dismissed for want of jurisdiction over the subject matter; and that the complained of conduct was not in violation of the "law of nations".

On April 18, 1972 the District Court entered an order granting summary judgment against petitioners and in favor of respondents as to the involuntary servitude claims, and, as to all other claims the complaint was dismissed. The District Court issued no written opinion. The petitioners perfected a timely appeal.

On March 14, 1973, the Court of Appeals for the Seventh Circuit affirmed the decision of the District Court. The Court of Appeals rejected the petitioners' claims based upon violations of the Civil Rights Act §1981, holding that the complaint did not allege "specific acts of discrimination" and therefore inadequate (App. p. 4a). The Court of Appeals further refused jurisdiction based upon 28 U.S.C. §1350, on the basis that petitioners did not allege a tortious act in violation of the "law of nations" (App. pp. 4a-5a). In addition, the Court found no abuse of discretion by the Court in not entertaining petitioners' pendent claims, or in refusing extended discovery. Thus, the summary judgment in favor of respondents with respect to claims of involuntary servitude was affirmed.

REASONS FOR GRANTING THE WRIT

Claims arising under the law of Nations

The petitioners argued in the Court of Appeals and the District Court that the claims sounding in fraud and deceit were entitled to a federal forum by virtue of a specific jurisdictional grant contained in 28 U.S.C. §1350. That statute provides:

> "The district courts shall have original jurisdiction of any civil action by an alien for tort only, committed in violation of the law of nations or treaty of the United States."

This potentially significant grant of federal jurisdiction has never been decisively interpreted by this Court. The fundamental uncertainty surrounding this provision is evidenced by the decided sparsity of cases that have dealt with §1350. The Court of Appeals observed that the key element under the statute is the "elusive" concept of "law of nations" (App. p. 5a).

Although acknowledging that petitioners' claim contained allegations of "fraud and deceit" the Court of Appeals found petitioners' claim to be basically one for breach of contract. The Court went on to state that even assuming that petitioners' claim sounded in tort for fraud and deceit, there was still no basis for claiming a violation of the law of nations (App. p. 5a). In support of this conclusion the Court of Appeals cited prior cases interpreting §1350, the most comprehensive of which is *Lopes* v. *Schroder,* 225 F.Supp. 292, 295-97 (E.D. Pa. 1963). The Court there collected the prior decisions on the subject and observed:

> "The judicial decisions recognizing and enforcing 'the law of nations' under §1350 do not fully explain or define that phrase. At best, the cases arising under

this section show only the connotations of in violation of the law of nations." (225 F.Supp. at 296)

The *Lopes* Court further reasoned that only by examining prior decisions or works of jurists can one determine what is in violation of the "law of nations". Finally, the Court adopted a definition, quoted and accepted by the Court of Appeals in this case, as follows:

> "[T]he phrase 'in violation of the law of nations' means, *inter alia*, at least a violation by one or more individuals of those standards, rules or customs (a) affecting the relationship between states or between an individual and a foreign state, and (b) used by those states for their common good and/or in dealings *inter se*." (App. p. 5a).

The alleged fraudulent conduct of the respondent in the instant case related to securing of passports and establishing a "training program" for alien trainees. Obviously, the respondents used the governmental machinery of a foreign state to gain visas and passports. Further allegations in the petitioners' complaint charged interaction between Nigerian governmental officials and the respondent. Moreover, the fraudulent misrepresentations comprising the tortious activity challenged by the petitioners is repugnant to the laws of the United States, and undoubtedly equally repugnant to the laws of Nigeria and to any other civilized nation. The gravamen of the petitioners' complaint was that the importation of aliens by means of fraud and deceit and the contemporaneous issuance of passports resulted in a violation of the "law of nations". See: *Abdul-Rahman Omar Adra* v. *Clift*, 195 F.Supp. 857 (D. Md. 1961). Thus, petitioners respectfully submit that under the current standards their claim was one for a tortious violation of the "law of nations".

Claims arising under the Civil Rights Act

Petitioners' complaint alleged specific facts of discrimination directed against them as aliens which were not directed at other employees. The Complaint alleged that defendants required the petitioners to falsely and fraudulently complete social security forms omitting information about the existence of dependents; deducted significant amounts from their salaries to pay for the petitioners' transportation from Nigeria; and deducted certain amounts with exorbitant interest from their salaries for repayment of loans without the petitioners' consent, authority or knowledge.

Notwithstanding these direct, specific and substantial allegations of violations of civil rights, the Court of Appeals held that, "[t]he complaint fails to allege any specific acts of discrimination based on race or national origin" and was therefore, "[s]ubject to dismissal on this basis." (App. p 4a)

Petitioners respectfully submit that the dismissal of their claims based upon violations of the Civil Rights Act, 42 U.S.C. §1981, was in contravention of the spirit of the Civil Rights Act and the Federal Rules of Civil Procedure. The highly significant issue of federal law relating to the degree of specificity required to withstand a motion to dismiss in this all-important area should be resolved by this Court. In affirming the dismissal of the complaint, the Court of Appeals cited and relied on its prior decision in *Kamsler* v. *Zaslawsky*, 355 F 2d 526, 527 (7th Cir. 1966) which had held, under an extremely different set of facts, that "specific acts of discrimination" must be contained in a complaint predicated upon a civil rights statute.

The petitioners respectfully submit that the Court of Appeals erred because, as pointed out above, the complaint does, in fact, enumerate specific acts of discrimination. In addition, this approach of requiring a high degree of specificity in civil rights complaints flies in the face of the general policy of the federal courts underlying notice pleading, and frustrates the principles of the civil rights legislation. As this Court stated in *Conley* v. *Gibson*, 355 U.S. 41, 48 (1957):

> "[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. On the contrary, all that the federal rules require is a short and plain statement of the claim that will give the defendant fair notice of what the plaintiffs' claim is, and the grounds upon which it rests."

By its decision in this case the Court of Appeals, adopts a restricted standard which is contrary to the spirit and purpose of §1981. Cf. *Hackett* v. *McGuire Bros., Inc.*, 445 F.2d 442 (3rd Cir. 1971). See also: *Walters* v. *Wisconsin Steel Workers of International Harvester Co.*, 427 F.2d 476 (7th Cir. 1970) cert. den. 400 U.S. 911.

Courts of Appeals in other circuits have adopted a more liberal view toward the question of pleading under §1981, and will not condone a dismissal on such a thin basis. For example, in *Baines* v. *Merritt*, 376 F.2d 8, 11 (5th Cir. 1967) the Court noted:

> "Such motions (to dismiss for insufficient facts) should not be granted unless it appears that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim."

Accord: *Holmes* v. *New York City Housing Authority*, 398 F.2d 262, 265 (2nd Cir. 1968).

The allegations in the instant complaint were not wholly conclusionary, but were charges of specific acts of discrimination. A claim based on a violation of civil rights like any other claim based on federal law should not be dismissed for "mere vagrancies or lack of detail." *Harmon* v. *Valley National Bank of Arizona*, 339 F.2d 564, 567 (9th Cir. 1964).

The holding of the Court below is contrary to the teachings of this Court and the holdings of other Courts of Appeals. Accordingly, this Court should issue its Writ and fully review the question presented.

Claims based on pendent jurisdiction

The third contention raised in behalf of their petition, relates to the unwillingness of the Court of Appeals to invoke the doctrine of pendent claims announced in *United Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966). In the instant case, the petitioners asserted substantial federal claims sounding in peonage and involuntary servitude. These claims were dismissed not on a motion to dismiss, but on a summary judgment. Therefore, the District Court reached the merits of the claim and should have rendered a decision on the merits with respect to the pendent contract claims. Distinguishing this Court's decision in *Rosado* v. *Wyman*, 397 U.S. 397 (1970), relied on by petitioners, the Court of Appeals held that it was proper to dismiss the state law claims in this case.

In the *Rosado* opinion, relied on by petitioners, this Court stated:

> "We are not willing to defeat the commonsense policy of pendent jurisdiction—the conservation of judicial energy and the avoidance of multiplicity of litigation—by a conceptual approach that would re-

> quire jurisdiction over the primary claim at all stages as a prerequisite to resolution of the pendent claim." (397 U.S. at 405)

The Court of Appeals chose to distinguish *Rosado* from the instant case on the basis that the principal claim in this case was dismissed for insubstantiality, while the federal claims in *Rosado* were dismissed for mootness. Petitioner respectfully contends that the principal claims in the instant case which were dismissed by summary judgment were *not* rejected for insubstantiality. Further, the approach by the Court of Appeals should be rejected as not being within the mainstream of federal law in the area of pendent jurisdiction. This Court should reaffirm the trend toward active use of pendent jurisdiction.

CONCLUSION

For the reasons set forth herein, petitioners respectfully submit that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

IN THE

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

SEPTEMBER TERM, 1972 — JANUARY SESSION, 1973

No. 72-1501

SIMEON TOBA ABIODUN, et al.,
Plaintiffs-Appellants,

v.

MARTIN OIL SERVICE, INC., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 71 C 622

PHILIP W. TONE,
Judge.

DECIDED MARCH 14, 1973

Before: PELL, STEVENS and SPRECHER, *Circuit Judges.*
PER CURIAM:

Plaintiffs have appealed from the entry of summary judgment in favor of the defendants as to alleged violations of the Thirteenth Amendment's prohibition against involuntary servitude and from the dismissal of the complaint as to all other claims. The defendants have moved to affirm without oral argument, pursuant to Circuit Rule 22. We have reviewed the record and briefs and are satisfied that the issues presented on appeal are insubstantial.

Plaintiffs, four Nigerian citizens, signed contracts with Alpha-Niger Enterprises providing for training in the United States with Martin Oil Company and subsequent employment in Nigeria wtih Alpha-Niger. The contracts were signed by defendant, Harry Ayoade Akande, on behalf of Alpha-Niger. Plaintiffs allege that Akande represented himself as an agent of Martin Oil Service, Inc., with authority to select four or five persons who would be trained as executives in the United States and would then return to Nigeria to operate Martin Oil's enterprises there. After the plaintiffs arrived in the United States and discovered that they were to be trained as service station operators and not as executives they filed this suit against Martin Oil Service, an Illinois corporation, two of its officers, the executors of the estate of one of the major shareholders, and Akande, a citizen of Nigeria.

Plaintiffs have advanced several theories to sustain federal jurisdiction. First, they claim jurisdiction under 28 U.S.C. §1343 on the theory that the defendants' conduct subjected them to peonage and involuntary servitude in violation of the Thirteenth Amendment and discriminated against them on the basis of race and national origin. A second jurisdictional claim, under 28 U.S.C. §1350, is based on the theory that the defendants' conduct constituted a tort in violation of the law of nations. A third jurisdictional allegation contained in the complaint, 8 U.S.C. §1329, is not argued in plaintiffs' brief on appeal. Finally, plaintiffs argue that the district judge should have exercised pendent jurisdiction over certain ancillary claims, under the doctrine developed in *United Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966).

The plaintiffs argue that summary judgment was improper on the Thirteenth Amendment claim because they were denied adequate discovery and because material issues of fact remained unresolved. Rule 56, F.R.C.P. The record before us conclusively refutes these claims. The complaint was filed March 11, 1971, and discovery was

initially ordered closed by November 30, 1971. On the plaintiffs' motion, the time for completion of discovery was extended to December 30, 1971, and again until January 6, 1972. According to the plaintiffs' motion of November 19, 1971, seeking to extend discovery for an additional six months, the only discovery that they had undertaken to that date was a one-day deposition of Akande which was not completed. Prior to the close of discovery, however, the plaintiffs deposed eleven employees of the defendant Martin Oil and the defendant Akande; plaintiffs also gave over 2,000 pages of deposition testimony, and participated in a full exchange of documents. The motion for summary judgment was filed on January 4, 1972, and was supported by several affidavits and citations to deposition testimony. The plaintiffs admit that they failed to submit any affidavits or other documentary material in opposition. To avoid summary judgment on this ground, pursuant to Rule 56 (e), they argue that the denial of their motion for extended discovery prevented them from pursuing discovery in Nigeria, which discovery would reveal information regarding the motivation of the defendants in undertaking the training program and the understanding of Nigerian officials with respect to the course of events. See Rule 56 (f). However, in view of the amount of time which had already been afforded the plaintiffs, their delay in beginning discovery, and the vague and speculative nature of their assertion that further discovery in Nigeria would develop genuine issues of material fact, we find no error in the district judge's refusal to further extend the time for completion of discovery. Cf. *First National Bank* v. *Cities Service Co.*, 391 U.S. 253 (1968).

Furthermore, nothing in the papers before the district judge on the motion for summary judgment presented a genuine issue as to any material fact so as to preclude summary judgment on the claim that plaintiffs were coerced to work against their will. The complaint alleged that the plaintiffs were in the United States "under a

condition in the nature of peons performing "involuntary servitude" because they could no longer find employment in Nigeria, their former jobs were unavailable, and they were required to reimburse Martin Oil for travel and other expenses. However, it was unrefuted that three of the plaintiffs are no longer employed by Martin Oil, that the fourth chose to remain although stating in his deposition that he was not prevented from leaving, that Martin Oil had written off any indebtedness, and that all had obtained changes in their visa category to that of "foreign student." None sought work from any Nigerian employer other than their former employer, or requested the assistance of friends or relatives in Nigeria, or registered for work with any agency, or searched want ads in Nigeria. Plaintiffs also did not dispute defendants' claim that they were paid union scale wages. Clearly the district judge was correct in his conclusion that there were no genuine issues of material fact on the Thirteenth Amendment claim.

Plaintiffs also assert jurisdiction under 28 U.S.C. §1343, on the theory that they were discriminated against because of their status as aliens and members of a particular ethnic group, in violaton of 42 U.S.C. §1981. However, the complaint fails to allege any specific acts of discrimination based on race or national origin and is subject to dismissal on this basis. See, e.g., *Kamsler* v. *Zaslawsky*, 355 F.2d 526, 527 (7th Cir. 1966). Plaintiffs' brief merely asserts that the entire contractual connection involved in this case can be viewed as a sophisticated form of discrimination, designed to exploit individuals handicapped due to their nattional origin. We find no error in the dismissal of the §1981 claim.

Plaintiffs' next jurisdictional allegation is based on 28 U.S.C. §1350, which gives the district courts jurisdiction of civil actions by aliens for a tort only, committed in violation of the law of nations or a treaty of the United States. On its face, plaintiffs' claim is for breach of contract. To avoid this conclusion, plaintiffs assert that the

elements of fraud and deceit in the defendants' conduct make this a claim sounding in tort. Even if this is a correct characterization of their claim, there is simply no basis for claiming a violation of the law of nations. Plaintiffs advance two arguments in this regard. First, they argue that transporting persons from one country to another and forcing them to work against their will violates the law of nations. This is merely an attempt to restate the Thirteenth Amendment claim which we have found to be without merit. Secondly, they argue that fraud is considered immoral and unlawful by all nations and thus is a violation of the law of nations. Although the concept of "law of nations" is an elusive one, there is nothing in the authorities cited by the plaintiffs that would support such an expansive interpretation of federal court jurisdiction under 28 USC § 1350. See *Abdul-Rahman Omar Adra* v. *Clift*, 195 F.Supp. 857 (D.Md. 1961) and *Lopes* v. *Schroder*, 225 F.Supp. 292 (E.D. Pa. 1963). In *Lopes*, the court concluded that the phrase "in violation of the law of nations," "means, *inter alia*, at least a violation by one or more individuals of those standards, rules or customs (a) affecting the relationship between states or between an individual and a foreign state, and (b) used by those states for their common good and/or in dealings *inter se*." Supra at page 297. This case is totally unlike those cases in which violations of the "law of nations" have been held actionable. See *Moxon* v. *Fanny*, 17 Fed. Cas. 942, No. 9895 (D.Pa. 1793); *Bolchos* v. *Darrel*, 3 Fed. Cas. 810, No. 1607 (D.S.C. 1795); *O'Riley DeCamara* v. *Brooke*, 209 U.S. 45 (1908); *Khedivial Line, S.A.E.* v. *Seafarer's International Union*, 278 F.2d 49, 52 (2nd Cir. 1960).

Finally, the plaintiffs argue that the district court erred in refusing to exercise pendant jurisdiction over the contract claims. The *Gibbs* case, supra, states clearly that "pendant jurisdiction is a doctrine of discretion, not of plaintiff's right," and that "certainly, if the federal claims are dismissed before trial, even though not insubstantial

in a jurisdiction sense, the state claims should be dismissed as well." Supra at page 726. *Rosado* v. *Wyman*, 397 U.S. 397 (1970), cited by plaintiffs for the proposition that the Supreme Court has retreated from the rigid language in *Gibbs* regarding dismissal of federal claims before trial, dealt with a dismissal for mootness and not insubstantiality. We are convinced that there was no abuse of discretion in refusing to exercise pendant jurisdiction, after the disposition of the civil rights and law of nations claims.

Accordingly, the motion to affirm without oral argument is granted and the judgment of the district court is affirmed.

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 1664

SIMEON TOBA ABIODUN, et al.,

Petitioners,

v.

MARTIN OIL SERVICE, INC., et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

STATUTES INVOLVED

28 U.S.C. 1350, p. 7575 (1970)

§ 1350. Alien's action for tort.

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

42 U.S.C. 1981, p. 10281 (1970)

§ 1981. Equal rights under the law.

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons

and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

QUESTIONS PRESENTED FOR REVIEW

I.

Whether a suit on a contract that fails to allege any "violation of the law of nations" is sufficient to sustain federal jurisdiction under 28 U.S.C. § 1350.

II.

Whether a complaint sounding in contract that alleges that aliens are parties to the controversy but fails to allege any acts of discrimination states a civil rights cause of action under 42 U.S.C. § 1981.

III.

Whether the district court committed an abuse of discretion when it refused to hear state law claims after dismissing federal claims prior to trial.

STATEMENT OF CASE

This case is basically a private contract dispute among five Nigerian nationals, four of the petitioners and the respondent Harry O. Akande. According to the petitioners, respondent Harry O. Akande, persuaded four of them ("the Trainees") to sign a "trainee contract" with Alpha-Niger Enterprises by suggesting that at the conclusion of a management training program in the United States with respondent Martin Oil Service, Inc. ("Martin Oil") they would be made executives in service station operations in Nigeria. (Complaint, ¶ 4) Petitioners allege that after the Trainees' arrival in the United States they were required to work for Martin Oil as ordinary service station attendants and were not given suitable executive training. (Complaint, ¶ 7) They also allege that Martin Oil failed to establish service station operations in Nigeria in breach of the Trainees' agreement with Alpha-Niger Enterprises. (Amendment to Complaint, ¶ 10(h)) Dissatisfied with the training program, petitioners filed suit against Akande, Martin Oil, two of its officers and the executors of the estate of one of its major shareholders.

In an attempt to create federal jurisdiction over their dispute, petitioners asserted that respondents' alleged conduct subjected the Trainees to involuntary servitude in violation of the Thirteenth Amendment, discriminated against them on the basis of race in violation of 42 U.S.C. § 1981 and constituted a tort in violation of the Law of Nations within the meaning of 28 U.S.C. § 1350. The District Court granted summary judgment against petitioners on their involuntary servitude claim and dismissed all other claims.

The Court of Appeals affirmed concluding, "the issues presented on appeal are insubstantial." (App. A. to Petition, p. 1a)

ARGUMENT

The Petition itself demonstrates that this litigation raises no important question of federal law requiring a decision by this Court. The Petition urges that the statute granting federal jurisdiction for tort actions founded upon violations of the law of nations be "decisively interpreted" by this Court without questioning the standard followed by the lower courts in this case or pointing to any conflict among the lower courts that have construed the statute; it strains semantics attempting to show that the lower courts applied an unduly strict standard of pleading to petitioners' civil rights claim; and it ignores the governing principles of pendent jurisdiction.

I. No Violation of the Law of Nations is Alleged.

Petitioners imply that "the decided sparcity of cases that have dealt with § 1350"[1] indicates a "fundamental uncertainty surrounding this provision" requiring that the grant of federal jurisdiction under that statute be "decisively interpreted by this Court." (Petition, p. 7) Respondents submit that the sparcity of cases demonstrates only that factual situations rarely arise that come within the limited grant of federal jurisdiction under that statute. In any event, petitioners do not and cannot suggest that the few reported decisions dealing with § 1350 evidence any conflict whatsoever.

As the Court of Appeals concluded, a violation of the law of nations giving rise to federal jurisdiction under § 1350 contemplates only tort actions affecting relationships between sovereign nations or between a nation and a for-

[1] 28 U.S.C. § 1350 (1970) states, "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

eigner. (App. A. to Petition, p. 5a) Manifestly, § 1350 is not intended to provide an alternative forum in which aliens may litigate private tort claims. See, *Lopes* v. *Schroder*, 225 F. Supp. 292 (E.D. Pa. 1963).

Even if one reads petitioners' allegations in the light most favorable to them and characterizes their contract action as one sounding in tort because it alleges fraud in the inducement, as the Court of Appeals did, it nevertheless fails to allege a violation of the law of nations. (App. A. to Petition, pp. 4a-5a) Any fraud alleged relates solely to inducing petitioners to sign the "trainee contract" and not to any fraudulent violation of a foreign law.

Petitioners' allegations are wholly unlike *Abdul-Rahman Omar Adra* v. *Clift*, 195 F. Supp. 857 (D. Md. 1961), upon which they rely, where a Lebanese minor had been brought unlawfully to the United States by her Iraqi mother under a falsely obtained Iraqi passport in violation of the laws of Iraq, Lebanon and the United States. This case is a dispute among private litigants and affects none of "the standards which nations have established to control their relationships with one another." *Valanga* v. *Metropolitan Life Insurance Co.*, 259 F. Supp. 324, 328 (E.D. Pa. 1966).

II. No Racial Discrimination is Alleged.

Contrary to petitioners' assertions, this case manifestly does not raise any issue relating to the degree of specificity required in allegations of civil rights violations. In affirming dismissal of petitioners' claim based upon a violation of 42 U.S.C. § 1981, the Court of Appeals reviewed the Complaint and concluded that it

> fails to allege any specific acts of discrimination based upon race or national origin and is subject to dismissal on that basis. (App. A. to Petition, pp. 1a, 4a)

Petitioners have seized upon the Court of Appeals' use of the word "specific" and assert that the lower court held that the allegations of their civil rights claims were not sufficiently detailed.

The Court of Appeals did not hold that a plaintiff in a civil rights action must allege discrimination with rigorous particularity. Rather the court correctly concluded that petitioners' Complaint fails to allege *any act* of discrimination based upon race. Petitioners' own characterization of the Complaint demonstrates that it fails to allege discrimination. According to petitioners the Complaint alleges in substance that respondents required them to complete false social security forms and made deductions from their salaries to pay for their transportation from Nigeria and for their uniforms. (Petition, p. 9) None of those acts amount to discrimination, much less discrimination because of petitioners' race.

In effect petitioners are asking this Court to scan their Complaint and determine if it agrees with the conclusions of the lower courts that no discrimination is alleged. Respondents submit that such a request not only misconstrues the purposes of this Court's review on certiorari but also is unnecessary since the findings of the lower courts were correct.

III. Pendent Jurisdiction Is A Doctrine of Discretion.

In affirming dismissal of petitioners' pendent contract claims, the Court of Appeals recognized that the doctrine of pendent jurisdiction is one of discretion. (App. A. to Petition, pp. 5a-6a) The Court of Appeals noted that in *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 726 (1966), this Court expressly recognized the propriety of dismissing pendent claims when state claims are dismissed prior to

trial—the procedure followed by the District Court in this case. (App. A. to Petition, pp. 5a-6a) Nevertheless, petitioners imply that the Court of Appeals misread this Court's decision in *Rosado* v. *Wyman*, 397 U.S. 397 (1970). However, this case is fundamentally unlike *Rosado* in which the pendent claim was "so essentially one 'of federal policy that the argument for exercise of pendent jurisdiction [was] particularly strong.'" 397 U.S. at 404. Here, petitioners' pendent claim sounds in contract. This is truly a case in which "the federal claim is only an appendage" to what is exclusively a state claim. *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 727 (1966).

Petitioners also suggest that because the District Court's summary judgment against their involuntary servitude claims was a decision on the merits, the court should have decided their pendent contract claims. Significantly, petitioners do not challenge the Court of Appeal's affirmance of summary judgment against their involuntary servitude claims. Moreover, the relevant consideration in determining whether the District Court should have exercised jurisdiction over the pendent claims is fairness to litigants and not whether federal claims are disposed of by summary judgment or dismissal. See, *United Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966). As the opinion of the Court of Appeals indicates, summary judgment against petitioners was justified not only because there was no material disputed fact but also because petitioners failed to file any affidavits or documentary material opposing summary judgment. (App. A. to Petition, p. 3a) See Rule 56(e), Federal Rules of Civil Procedure. Having failed to file even a single opposing paper in the face of summary judgment, petitioners can hardly claim that they have devoted such substantial time and energy to the litigation that the District Court's failure to entertain their state law claims was an abuse of discretion.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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July 9, 1973